

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILLIP MADISON, JR.,

Plaintiff,

vs.

Case No. 12-cv-12325
HON. GERSHWIN A. DRAIN

DR. KENDULSKI, *et al.*,

Defendants.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION, GRANTING DEFENDANTS'
MOTION TO DISMISS [#17] AND DISMISSING ACTION**

This 42 U.S.C. § 1983 prisoner civil rights action was filed on May 29, 2012. Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. On November 27, 2012, this Court referred this matter to Magistrate Judge Mark A. Randon for all pretrial proceedings pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (b)(1)(B). Thereafter, Defendants filed a Motion to Dismiss based on Plaintiff's failure to exhaust his administrative remedies pursuant to the Prison Litigation Reform Act of 1995 (PLRA), 110 Stat. 1321-71, as amended, 42 U.S.C. § 1997e *et seq.* On March 5, 2013, Magistrate Judge Randon issued a Report and Recommendation recommending that Defendants' Motion to Dismiss be granted because Plaintiff failed to exhaust his administrative remedies. Plaintiff has failed to file objections to Magistrate Judge Randon's Report and Recommendation and the time for filing objections has expired. *See* Fed. R. Civ. P. 72(b)(2).

The Court has reviewed the Report and Recommendation and the parties' filings, and concludes that Magistrate Judge Randon reached the correct conclusion. Plaintiff has failed to

demonstrate exhaustion of administrative remedies, therefore his Complaint must be dismissed. *See Jones v. Bock*, 549 U.S. 199, 218 (2007) (“[T]o properly exhaust administrative remedies prisoners must ‘complete the administrative review process in accordance with the applicable procedural rules’ defined “by the prison grievance process itself.””). Here, Plaintiff failed to file his Step III grievance appeal with prison officials as mandated by Michigan Department of Corrections Policy Directive 03.02.130. Therefore, the PLRA mandates dismissal of his action.

Accordingly, the report and recommendation of Magistrate Judge Mark A. Randon, dated March 5, 2013, is ACCEPTED and ADOPTED as this Court’s findings and conclusions of law.

Defendants’ Motion to Dismiss [#17] is GRANTED.

This cause of action is DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

Dated: March 29, 2013

/s/ Gershwin A Drain
GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on March 29, 2013, by electronic and/or ordinary mail and also to Phillip Madison, Jr. at Charles Egeler Reception and Guidance Center, 13855 Cooper Street, Jackson, MI 49201.

/s/ Tanya Bankston
Deputy Clerk